



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

SMC  
Docket No: 07242-99  
9 March 2000

SS [REDACTED] USMC  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Sta [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of two fitness reports, for 23 June to 30 September 1993 and 1 January to 19 April 1995.

It is noted that the Commandant of the Marine Corps (CMC) has removed the reviewing officer's comments from the report for 1 January to 19 April 1995.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 22 November 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting complete removal of the contested fitness reports.

The Board did not find any inconsistency between the marks of "AA" (above average) in judgment and the reporting seniors' comments to the effect that you had "Good" judgment (report for 23 June to 30 September 1993) and that you demonstrated independent thought and action, were eager to respond and solve problems, and were capable of handling diverse and difficult assignments (report for 1 January to 19 April 1995). While the reviewing officer's comment on the contested report for 23 June to 30 September 1993 did refer to your experience, the Board did not find this a violation of the rule against commenting on a Marine's lack of experience in a new assignment or grade. In this regard, they noted that when you received this report, you were neither in a new job nor in a new grade. Finally,

the Board found the reporting senior's comments, in the contested report for 1 January to 19 April 1995, to the effect that you were quick to learn new skills and continued to improve your skills and knowledge, was not a comment on inexperience.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



7242-99

DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1610  
MMER/PERB  
NOV 22 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 17 Sep 99  
(b) MCO P1610.7C w/Ch 1-6  
(c) MCO P1610.7D

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 17 November 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 930623 to 930930 (GC) -- Reference (b) applies
- b. Report B - 950101 to 950419 (TD) -- Reference (c) applies

2. The petitioner contends that both reports fail to comply with the provisions of the applicable performance evaluation directive in that the markings in Section B do not correspond with the comments contained in the respective Section C narratives. To support his appeal, the petitioner furnishes his own analysis of the two reports.

3. In its proceedings, the PERB concluded that, with one minor exception, both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board stresses that the petitioner is mistaken in his belief that MCO P1610.7C governed the submission of both reports. The applicable directives are as listed by references (b) and (c). That fact notwithstanding, neither report fails to fully comply with the directives in effect.

b. There is nothing in Report A or in the Reporting Senior's evaluation at Report B that connotes or even alludes to less than satisfactory performance. That the petitioner takes exception with the word "good" and the "above average" ratings in Item 14g (judgment) on both reports is viewed as nothing more than a disagreement with the Reporting Seniors' views of his performance. Neither his disagreement nor the comments/marks to

(3) PERB

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which the petitioner objects constitute an "adverse", "inconsistent", or invalid fitness report. As a final matter, the Board observes that other than his own statement, the petitioner has not furnished any material or documentary evidence to show that he somehow rated more than what has been recorded in either report. To this end, the Board concludes that the petitioner has failed to establish the existence of either an error or an injustice.

c. The Board takes exception with the Reviewing Officer's comments appended to Report B and finds the petitioner should have been afforded an opportunity to officially acknowledge and respond. Since to do so at this late date (more than four years) would not constitute adequate relief, the Board has directed removal of those comments.

4. The Board's opinion is that Report A, and Report B as modified, should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3c is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps